REMARKS

The Examiner is thanked for the review of the application. No amendment has been entered. Claims 1-24 remain pending.

Claims Distinguished

Claims 1-24

Claims 1-24 were rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 5,742,829 to Davis et al. (*"Davis"*).

Claim 1 reads as follows:

> 1.   In a server, a method of operation comprising:
>   accepting check in by **a client computer** at a first point in time to determine if the client computer's software needs to be updated; and
>   providing **the client computer** with an update task list listing one or more tasks to be performed by **the client computer asynchronously** at **a later point** or **later** points in time to update **the client computer's** software, if it is determined that the client computer's software is to be updated. (*emphasis added*)

Examiner maintained rejection of Claims 1-24 asserting:

> In view of the U.S. Court of Customs and Patent Appeals holding that claims are to be given their broadest reasonable interpretation during the prosecution of a patent. <u>In re Pearson</u> 494 F.2d 1399, 1403, 181 USPQ 641, (CCDPA 11974) and for art rejection purposes, claimed element **server** is equated with **Site Server** 202 (Figure 3A) and claimed element **client computer** with **Client Server** 215 (Figure 3B).
>
> According to the context provided by the preamble (i.e., In a **server**) and the claim language of the recited limitations in the body of Claim 1, it is understood that the two recited method steps are to be performed by a server, not by a client. Therefore, the Office action has cited the Scheduler 312 (Figure 3A) because it is understood that this scheduler schedules software update tasks to be performed by the Client Server (see Figure 3B, item SMSLS Batch File 352 which involves Client Setup Executable 354 that install software onto the client computer).
>
> Based upon this interpretation, Davis appears to anticipate all the claimed elements of claim 1. The rejection of claim 1 under 35 U.S.C. § 102(b) as being anticipated by Davis is considered to be proper and thus maintained.

Applicants respectfully traverse the rejection. As recited in Claim 1, among other things, a necessary feature is **the server** providing **the client computer** with an update task list and **the client computer** asynchronously at **a later point** or later points in time update the **client computer's own software**.

Davis teaches the use of <u>a client server</u> that receives update software from <u>a site server</u> and then the <u>client server</u> initiates updates of the corresponding software residing on the <u>client computer (see at least 10:44-46 and 10:55-59)</u>. Note that the client server and the client computer in *Davis* are separate and distinct devices (see e.g. Figure 2). Further, *Davis* teaches the scheduling of the updates are controlled by the site server (see e.g. item 312 of Figure 3A). By contrast, in the present invention **the client computer** "checks in" with the server for possible updates on its own initiative. On receiving an update task list from the server, the **client computer** initiates the update, at **a later point** in time (e.g. at its own convenience) of the client computer's own software.

While *Davis'* client server receives update instructions from the site server (the program list residing on the client server is updated by the configuration manager residing on the site server), it does not update itself at a later point in time. Instead, it uses the instructions to update other client computers (a separate device) it serves.

Therefore, *Davis'* provision of software update instructions from the site server to the client server cannot be equated to, and accordingly does not anticipate, the required "<u>providing the client computer with an update task list</u>" of claim 1 (as the client computer is required to in turn use the instructions to update itself asynchronously at a later point in time).

Similarly, while *Davis'* client computer gets updated based upon a determination made by the client server, the client computer does not receive an update task list, nor does it perform the updates listed in the received update task list. Therefore, *Davis'* updating of other client computers by the client server cannot be equated, and accordingly does not anticipate the required "asynchronous, subsequent update, after receipt of update task list, by the client computer" of claim 1.

Claims 8, 13 and 20 contain in substance the same limitations as claim 1. Therefore, for at least the same reasons, claims 8, 13 and 20 are patentable over *Davis*.

Claims 2-7, 9-12, 14-19, and 21-24 depend from allowable independent claims 1, 8, 13 and 20, incorporating their limitations. Therefore, for at least the same reasons, claims 2-7, 9-12, 14-19 and 21-24 are therefore allowable for the reasons already noted above.
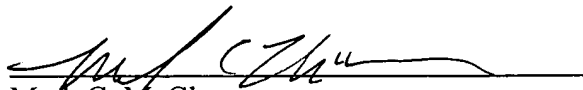
CONCLUSION

Entry of the foregoing remarks is respectfully requested and a Notice of Allowance is earnestly solicited.

Please charge any shortages and credit any overages to Deposit Account No. 500393.

Respectfully submitted,
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